

UNITED STATES OF AMERICA
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ NOV 09 2016 ★

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UNITED STATES OF AMERICA

-against-

Itzhak Hershtko,

LONG ISLAND OFFICE

[] WAIVER OF SPEEDY TRIAL
[] ORDER OF EXCLUDABLE DELAY

16 - CR - 0573 (LDW)

Defendant(s)
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It is hereby stipulated that the time period from 1/20/17 until 11/9/16 be excluded periods of delay under the following code(s):

<u>18 U.S.C. § 3161</u>	<u>DELAY CODE</u>	<u>DELAY CATEGORY</u>
(h)(1)(A)	A	Exam or hearing for mental or physical incapacity pursuant to 18 U.S.C. § 4244.
(h)(1)(B)	B	Narcotic Addict Rehabilitation Act (NARA) Exam pursuant to 28 U.S.C. § 2902.
(h)(1)(D)	C	State or Federal trials or other charges.
(h)(1)(E)	D	Interlocutory appeals.
(h)(1)(F)	E	Pretrial motions (from filing or being orally made to hearing or other prompt disposition).
(h)(1)(G)	F	Transfers from other Districts pursuant to Rules 20, 21, or 40.
(h)(1)(J)	G	Proceeding under advisement not to exceed 30 days.
	H	Miscellaneous proceedings: Parole or Probation Revocation, Deportation, or Extradition.
(h)(2)	I	Prosecution deferred by mutual agreement.
(h)(1)(H)	J	Transportation from another District or to and from examination or hospitalization in ten days or less.
(h)(1)(I)	K	Consideration by court of proposed plea agreement.
(h)(3)(A), (B)	M	Unavailability of Defendant or essential witness.
(h)(4)	N	Period of Defendant's mental or physical incompetence to stand trial.
(h)(5)	O	Period of NARA commitment or treatment.
(h)(6)	P	Superseding Indictment and/or new charges.
(h)(7)	R	Defendant awaiting trial of co-defendant when no severance has been granted.
(h)(8)(A), (B)	T	Continuances granted per (h)(8) as determined by the Court due to: <i>(Circle the appropriate category on the following page.)</i>

- I. Emergencies such as:
 - a. Natural disasters.
 - b. Blackouts.
 - c. Public transportation or other strikes, which substantially affect the Court's ability to operate or the ability of the party to prepare for or proceed to trial.
 - d. Illness or death of defense counsel, the prosecutor, or the judge as well as mourning periods observed by the parties, counsel, or the court.
- II. The cooperation of the Defendant. (If this order is to be sealed due to the cooperation of the Defendant, check appropriate area at the end of this order)
- III. The Government attorney or defense counsel has demonstrated due diligence in all available time, but nevertheless still require additional time for preparation to prevent miscarriage of justice, such as:
 - a. The attempt to locate an important witness whom defense counsel has not been able to locate.
 - b. Belated discovery motions or notice of alibi defense which require additional time to investigate or expert analysis.
- IV. The assurance that both the Defendant and the Government be represented by counsel of choice and by the same attorney throughout the proceedings such as:
 - a. Counsel for the Government and/or the Defendant are unavailable for either date chosen by the Court, or the last date on which trial could commence under the Speedy Trial Act.
 - b. Inadequate time to prepare for this trial following the conclusion of counsel's last trial.
 - c. A brief vacation planned well in advance of the trial date.
- V. The issue of complexity such as:
 - a. Complex or unusual case such as antitrust, securities fraud, mail fraud, narcotics conspiracy, and net worth income tax cases.
 - b. Multiple parties or extensive documentary evidence.
- VI. The Court orders the severance of the trial of one or more co-defendants either before trial commences or during trial.
- VII. Excusable error or neglect such as:
 - a. Miscalculation in the excludable time available.
 - b. A clerk's failure to file a dismissal of the complaint, although directed by the Government to do so.
 - c. The determination that a period of time previously held automatically excluded was incorrect.
- VIII. The case may be disposed of after other proceedings are concluded such as:
 - a. Pending Supreme Court case determinative of the outcome.
 - b. Where appellate affirmance of another proceeding involving the Defendant will result in the Government's dismissal of this case.
- IX. Time during the arrest-Indictment or Information interval by events beyond the control of the Court or the Government attorney, such as:
 - a. The Government's desire to pursue leads furnished by the defense.
 - b. A reasonable time needed for the completion of laboratory examination.
 - c. Emergencies such as the sickness of the Government attorney.
 - d. Cooperation of the Defendant.
 - e. A reasonable period of time (not to exceed 60 days) beginning with the Defendant's request to be considered for deferral prosecution.
 - f. The time needed so that the Government attorney can comply with the Grand Jury Guidelines promulgated by the Department of Justice.

18 U.S.C. § 3161**DELAY CODE**

(i)	U	Time up to withdrawal of Guilty Plea.
(b)	W	Grand Jury Indictment time extended 30 additional days.
	X	Other: <i>Interest of Justice requires voluminous discovery; plea negotiations</i>

- [] This record of Excludable Delay is to be recorded upon the docket sheet by code only, and the order placed under seal by the Clerk of the Court.
- [] The non-trial period of time pursuant to 18 U.S.C. § 3161(c)(2) shall have commenced on _____ (date of the first appearance through counsel or waiver of counsel).

The Defendant has been fully advised by counsel of his/her rights guaranteed under the Sixth Amendment to the United States Constitution; the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-74; the Plan and Rules of this Court adopted pursuant to that Act; and Rule 50(b) of the Federal Rules of Criminal Procedure. The Defendant understands that he/she has a right to be tried before a jury within a specified time period, not counting excludable periods.

The Court approves this Speedy Trial [X] Waiver / [] Excludable Delay based upon its findings that this action serves the ends of justice and outweighs the best interest of the public and this Defendant in a speedier trial.

Dated: 11/9/16
Central Islip, New York

✓ Robert D. Pepe
United States District Judge

1. Defendant: L. Herskow Counsel: Robert D. Pepe
2. Defendant: _____ Counsel: _____
3. Defendant: _____ Counsel: _____
4. Defendant: _____ Counsel: _____
5. Defendant: _____ Counsel: _____
6. Defendant: _____ Counsel: _____
7. Defendant: _____ Counsel: _____
8. Defendant: _____ Counsel: _____
9. Defendant: _____ Counsel: _____
10. Defendant: _____ Counsel: _____

Assistant U.S. Attorney: R. F. C. H.